

**PARKING LOTS PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "**Agreement**") is entered into as of _____, 2000, by and between the **CITY OF SAN DIEGO**, a municipal corporation ("**Seller**"), and the **SAN DIEGO UNIFIED PORT DISTRICT**, a public corporation ("**Purchaser**").

RECITALS

A. Purchaser believes that the development of additional public parking is needed to serve the needs of the Convention Center and the Expansion. Therefore, Purchaser has agreed to purchase four parking lots, commonly known as Parcels P5, P6, B2, and B3 and associated vacated streets (each a "**Lot**" and collectively, the "**Lots**") from Seller for the Purchase Price (as defined below).

B. As of the date of this Agreement, Seller has not acquired the Lots from the current owner of the Lots. Seller's acquisition of the Lots is a condition precedent to the Closing (as defined below).

C. As of the date of this Agreement, the Lots have not been improved to the condition in which they will be delivered to Purchaser.

D. Subject to the terms of this Agreement, Seller desires to sell the Lots to Purchaser, and Purchaser desires to purchase the Lots from Seller.

NOW, THEREFORE, in reliance upon the foregoing recitals and in consideration for the mutual covenants, conditions, and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. AGREEMENT TO PURCHASE LOTS.

Subject to the terms of this Agreement, Seller hereby agrees to sell, assign, and convey to Purchaser, and Purchaser hereby agrees to purchase from Seller all of Seller's right, title, and interest in and to the Lots.

2. DESCRIPTION OF THE LOTS.

The Lots will be deemed to consist of all of Seller's right, title and interest in and to the following:

(a) That certain real property in the City of San Diego, County of San Diego, State of California, more particularly described on Exhibit A attached hereto and incorporated herein by this reference, together with all buildings, structures, entry and exit systems, striping, and other improvements located on the Land (the “**Improvements**”);

(b) All rights, privileges, easements and appurtenances to the Lots, including, without limitation, all of Seller's right, title and interest in and to all easements, rights-of-way and other appurtenances, if any, used or connected with the beneficial use or enjoyment of the Lots (the Lots, the Improvements, and all such rights, privileges, easements, and appurtenances are collectively referred to in this Agreement as the “**Real Property**”). Notwithstanding the foregoing, this will not include any easements necessary and appropriate for the placement, operation and maintenance of public utilities; and

(c) All personal property, equipment, supplies and fixtures (collectively, the “**Personal Property**”) owned by Seller and located on the Lots and used in connection with the Real Property. (The Real Property and the Personal Property are collectively referred to in this Agreement as the “**Property**”).

3. **PURCHASE PRICE.**

The purchase price for the Property is Twenty-One Million Dollars (\$21,000,000) (the “**Purchase Price**”). Following execution of this Agreement by the parties and upon approval of this Agreement by the California State Lands Commission pursuant to Section 7(iv), Purchaser will pay to Seller the Purchase Price, as follows:

(a) Purchaser shall pay directly to Seller the sum of Seven Million Dollars (\$7,000,000.00) upon the later of April 30, 2000, or five (5) business days after approval of this Agreement by the California State Lands Commission.

(b) Purchaser shall deposit into escrow with a title company reasonably acceptable to Purchaser (“**Escrow Company**”) Fourteen Million Dollars (\$14,000,000) (being the remaining balance of the Purchase Price after payment of the amount paid pursuant to Section 3(a)) in immediately available funds, subject to Purchaser first having issued a bond or other form of public indebtedness secured exclusively by revenues received from the rental car transaction fee imposed by Purchaser pursuant to the provisions of Section 57.5 of the San Diego Unified Port District Act, within five business days after Seller notifies Purchaser that Seller has: (i) a need to deposit funds into court to commence eminent domain proceedings for acquisition of any of the Lots; or, (ii) reached an agreement to acquire any of the Lots, and Purchaser has approved, in its reasonable discretion, the terms of such acquisition, such approval shall not be unreasonably withheld or delayed. Purchaser acknowledges that the acquisition of the Lots may occur in one or more transactions.

(c) Seller may request the release from escrow of that portion of the Purchase Price it requires to acquire the Lots. Thereafter, Seller may request the release from escrow such funds as are actually necessary at the time of such request to complete Seller's obligations to remediate and improve the Lots as set forth in this Agreement. The release of such funds from escrow will be subject to Purchaser's approval, which will not be unreasonably withheld or delayed. Purchaser understands that Seller must have access to that portion of the Purchase Price necessary to acquire, remediate and improve the Lots to fulfill its obligation herein, and Purchaser's right to approve withdrawals from escrow shall be exercised with Seller's needs accordingly in mind.

(d) Escrow Company shall deposit the funds in an interest-bearing account insured by the federal government as directed by Purchaser. Purchaser shall bear all risk of loss with respect to the funds from any such investment. The funds remaining in Escrow after any releases pursuant to this Section 3 are refundable to Purchaser, in Purchaser's sole discretion, upon Seller's failure to satisfy all of Purchaser's Conditions Precedent (as set forth in Section 7 below) on or before the date that the San Diego Convention Center expansion opens to the public for business ("**Refund Date**"), provided the Refund Date shall be extended one day for each day Seller is delayed in performance of its obligations hereunder by a Force Majeure Event (as defined in Section 17 below). If, on the Refund Date, Seller has acquired the Lots or has obtained an Order of Immediate Possession ("**OIP**") pursuant to eminent domain proceedings it has commenced for acquisition of any of the Lots, but not completed its improvement obligations, then the title to such acquired Lots, or the right of possession which Seller has obtained, will be conveyed to Purchaser and all remaining funds in Escrow will be refunded to Purchaser. If, on the Refund Date, Seller has not acquired title, or an OIP, to the Lots, then all of the funds in Escrow will be refunded to Purchaser. In addition to the refund to Purchaser of amounts remaining in Escrow, and transfer by Seller to Purchaser of such title or right to possession of any of the Lots as Seller may have acquired, if, by the Refund Date, Seller has failed to satisfy all Purchaser's Conditions Precedent, Seller shall immediately repay to Purchaser the amount paid by Purchaser to Seller pursuant to Section 3(a), together with interest thereon calculated at a rate equal to the weighted average of the return on the Purchaser's investment portfolio as determined on a quarterly basis, commencing from the date of such payment and accruing until the date of such repayment.

(e) If Seller conveys to Purchaser right of possession to any of the Lots, then Seller covenants it will proceed to acquire title to said Lot(s) through eminent domain proceedings at its sole cost and expense. Seller further covenants it will not terminate such eminent domain proceedings for any reason whatsoever.

4. TITLE.

(a) No later than 60 days prior to close of escrow on any Lots, or the commencement of any eminent domain proceedings, Seller shall deliver, or cause a Title Company reasonably acceptable to Purchaser, to deliver to Purchaser a preliminary title report (the "**PTR**") pertaining to the Real Property issued by Title Company, together with copies of all documents relating to the title exceptions referred to in the PTR. On or before the date that is 120 days after the date of

this Agreement, Seller shall deliver or cause to be delivered to Purchaser and Title Company Seller's most recent copy of a survey of each of the Lots, prepared by a registered California land surveyor in accordance with ALTA/ASCM standards (the "**Surveys**"). The Surveys will set forth the gross square footage of the Lots and be sufficient to enable Title Company to update the PTR to: (i) delete the standard survey exception, (ii) add any new title exceptions which are revealed by said Survey and an inspection of the Real Property.

(b) Within thirty (30) days after it receives the PTR, Purchaser shall notify Seller in writing of any title exceptions shown in the PTR that Purchaser disapproves and the exceptions disapproved in such timely notice shall constitute "**Disapproved Exceptions**." Thereafter, if any written update to the PTR reveals a material exception to title not shown on the PTR, then Purchaser shall notify Seller in writing of Purchaser's disapproval of such new exception within ten (10) days after Purchaser's receipt of such update, and the exceptions disapproved in such timely notice shall also be "Disapproved Exceptions". Any exception not disapproved in writing within said 30-day period (for review of the PTR) or within said ten day period (for review of updates) shall be deemed approved by Purchaser, and will constitute a "**Permitted Exception**" hereunder. Notwithstanding anything else in this Agreement, any monetary lien or encumbrance recorded against any Lot will be deemed a Disapproved Exception. The following matters, however, will constitute "Permitted Exceptions," regardless of whether Purchaser disapproves of them: (i) all matters created by or on behalf of Purchaser; (ii) subject to Purchaser's approval, which will not be unreasonably withheld, a document containing covenants, conditions, and restrictions, recorded against the Lots by Seller, which limits the use of the Lots to surface parking lots during the existence of the downtown ballpark ("**Ballpark**") which will be the site of the San Diego Padres ("**Padres**") home baseball games if such covenants, conditions, and restrictions exists at the time of Closing; and (iii) that certain Settlement Agreement, dated December 7, 1999, between and among Seller, Agency, CCDC, the Padres, SDG&E and Environmental Health Coalition, which agreement requires that the Lots be operated in a manner which among other things prevents storm water pollution.

(c) In the event a document containing such covenants, conditions and restrictions which limits the use of the Lots to surface parking lots during the existence of the Ballpark which will be the site of the Padres home games has not been recorded against any Lot prior to the Closing, Purchaser shall, subject to its approval, which shall not be unreasonably withheld, agree to the recordation of a document containing such covenants, conditions, restrictions prior to or concurrent with the Closing.

(d) Within twenty (20) days after the date Seller receives Purchaser's written notice disapproving any title exceptions contained in the PTR (or update thereof), Seller will notify Purchaser in writing of any disapproved title exceptions which Seller is unable or unwilling to cause to be removed or insured against prior to or at Closing (the "**Unresolved Exceptions**"). With respect to any Unresolved Exception, Purchaser will elect, by giving written notice to Seller and Escrow Company within ten (10) days after Purchaser's receipt of Seller's determination regarding the Unresolved Exceptions, (i) to terminate this Agreement, or (ii) to waive its disapproval of such Unresolved Exceptions, in such event such Unresolved Exceptions shall then be deemed to be

"Permitted Exceptions." Purchaser's failure to terminate this Agreement within such ten-day period shall constitute Purchaser's agreement to treat the Unresolved Exceptions as Permitted Exceptions. If Purchaser terminates this Agreement in accordance with this Section 4, Escrow Company shall immediately refund all monies deposited by Purchaser, plus any interest accrued thereon, to Purchaser; provided, however, that Purchaser shall be responsible for all title and escrow cancellation fees.

(e) Purchaser, at Purchaser's option, may obtain additional or extended title coverage at Purchaser's sole cost and expense, including without limitation, any costs of surveys or survey updates as may be required to obtain extended coverage. Purchaser's receipt of such additional or extended title coverage will not be a condition to closing.

5. ENVIRONMENTAL OBLIGATIONS.

(a) Before the Closing, Seller will deliver to Purchaser a site characterization of the Lots, which will include a Phase I and Phase II, if reasonably necessary based upon Phase I indicators, environmental test of all of the Lots, and such other inspections and evaluations of the environmental condition of the Lots as are reasonably necessary following such environmental tests. The site characterization and all such tests will be conducted by or at the direction of Seller at Seller's sole cost and expense. If Seller has not acquired ownership of the Lots by such time as Seller desires to conduct these inspections and investigations, then Seller will use its best efforts to obtain the right to enter the Lots for such purposes. Seller will deliver to Purchaser any reports, test results, or other data acquired by Seller in connection with its investigation of the environmental condition of the Lots, including any reports relating to the condition of the Lots which are delivered to any governmental agency or third party, together with any other information whatsoever in its possession or control pertaining to the environmental condition of the Lots, and Purchaser will have the right to review all documents in the possession of the current owners of the Lots relating to the environmental condition of the Lots, including any environmental audits and assessments, toxic reports, environmental surveys, soils reports, and other documents relating to the environmental condition of the Lots. Following receipt and review of all information pertaining to Seller's investigation of the environmental condition of the Lots, Purchaser may, at its sole option and expense, conduct additional environmental tests of the Lots, provided such tests shall be concluded within sixty (60) days of actual receipt by Purchaser of Seller's site characterization results.

(b) If Seller or Purchaser discovers any Hazardous Material (as defined below) located on or under the Lots, then Seller must, at Seller's sole cost and expense, cause such contamination or Hazardous Materials to be removed or remediated to a level sufficient to operate the Lots for the purpose of a surface parking Lot. A condition to Purchaser's obligation to Close will be Seller's remediation of the Lots to the level required by this Section 5(b).

(c) For purposes of determining responsibility and liability for the environmental condition of the Lots of the Parties under the terms of this Agreement, the environmental condition of the Lots as of the Closing shall be determined with reference to the information contained

in Seller's site characterization of the Lots, together with any additional information obtained as a result of additional environmental testing of the Lots conducted as provided for in this Agreement.

(d) For purposes of this Agreement, the term “**Hazardous Material**” includes: any substance defined as a “hazardous substance”, “toxic substance”, “industrial process waste”, or “special waste” in (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601 et seq. (“CERCLA”), except that for purposes of this Agreement the definition also includes petroleum, natural gas, natural gas liquids, liquified natural gas, and synthetic gas; (ii) the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq.; (iii) the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. Sec. 2601 et seq.; (iv) the Clean Water Act, as amended, 33 U.S.C. Sec. 1251 et seq.; (v) the Clean Air Act, as amended, 42 U.S.C. Sec. 7401 et seq.; and (vi) the regulations adopted and official publications promulgated pursuant to said laws.

6. ENVIRONMENTAL INDEMNITY.

(a) Seller agrees to indemnify, defend, and hold harmless Purchaser, its commissioners, staff, officers, employees, and agents, their respective heirs, successors, personal representatives, and assigns from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, fines, losses, liabilities, and interest, and any and all costs and expenses incident thereto, including costs of defense, settlement, and reasonable attorneys’ fees (which shall include fees and expenses incurred in any administrative, judicial, or appellate proceeding, as well as any such fees and expenses incurred in enforcing this indemnity) of any nature (hereinafter a “**Loss**”) incurred by or imposed on Purchaser as a result of an “Environmental Claim”, as defined below, arising out of (i) any contamination of the Lots which existed before the Closing (or before the Refund Date if Purchaser exercises its rights pursuant to Section 3(c)), or (ii) the violation of an “Environmental Law,” as defined below (whether alleged, prosecuted or adjudicated), which occurred before the date of Closing. This Section 6(a) will not be construed to give Seller any rights to indemnity from Purchaser. A claim shall be deemed “made” upon notice by Purchaser to Seller under Section 8(b).

(b) Upon Purchaser obtaining knowledge of any information upon which it could reasonably be concluded that there is a risk of an Environmental Claim or a violation of an Environmental Law, Purchaser shall give notice within 60 days of receipt of such information to Seller. Seller shall have the option to remediate the Lots as necessary. Seller shall inform Purchaser of its election of this option within 30 days of receipt of such information from Purchaser. Purchaser’s failure to provide such information shall not relieve Seller of its obligations under this Section 6, provided that Seller shall be entitled to reimbursement from Purchaser for the amount by which the costs Seller incurs to comply with its environmental indemnity obligation hereunder exceeds the costs which reasonably would have been incurred had such information been provided to Seller and Seller had exercised its option to remediate the Lots.

(c) Upon the occurrence of any Loss that may give rise to the indemnity under Section 6(a), Purchaser will promptly give notice to Seller of the existence of such claim and the basis upon which indemnity is claimed and will give Seller reasonable opportunity to defend and/or

settle such claim at its own expense and with counsel of its own selection; provided, that Purchaser will at all times have the right to participate fully in such defense at its expense. If Seller fails to defend within a reasonable time after such notice, then Purchaser may, in its sole discretion, elect to undertake the defense, compromise or settlement of such claim on behalf of or for the account of and at the risk of Seller. If the claim is one that cannot by its nature be solely defended by Seller, then Purchaser will make available all such information and assistance as may be reasonably requested by the Seller.

(d) For purposes of this Agreement, the term “**Environmental Claim**” means any investigation, notice, demand, written allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding, or claim (whether administrative, judicial, or private in nature) arising in connection with the Lots and (i) pursuant to, or in connection with, an actual or alleged violation of, any Environmental Law; (ii) in connection with any Hazardous Material or actual or alleged activity involving any Hazardous Material; (iii) from any abatement, removal, remedial, corrective, or other response action in connection with a Hazardous Material, Environmental Law, or order of any Federal, state, regional, county, or local person or body having governmental or quasi-governmental jurisdiction over the Lots; or (iv) from any actual or alleged damage, injury, threat, or harm to health, natural resources, or the environment.

(e) For purpose of this Agreement, the term “**Environmental Law**” shall mean, but not be limited to, any duly enacted or authorized current treaty, convention, statute, law, regulation, ordinance, injunction, order, consent decree, permit, license, variance, certificate, consent, letter, clearance, closure, exemption, decision, action, approval or other enforceable action or decision of a governmental agency or body with jurisdiction over the Lots pertaining to (i) the protection of health and the indoor or outdoor environment; (ii) the conservation, management, or use of natural resources and wildlife; (iii) the protection or use of surface water and groundwater; (iv) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release (as defined in CERCLA), threatened Release, abatement, removal, remediation or handling, of, or exposure to, any Hazardous Material; or (v) pollution (including any Release to air, land, surface water, or groundwater).

(f) Port agrees not to make any representations or warranties to any third party, including potential purchasers or developers, about environmental conditions of the Lots except their suitability for surface parking lots.

(g) Subject to the terms and conditions of the Arbitration provision set forth in Section 16, each party will continue to have all the remedies available to it under the Environmental Laws to assert an Environmental Claim directly against the other party.

7. CONDITIONS PRECEDENT TO CLOSING.

(a) The following shall be conditions precedent to Purchaser's obligation to consummate the purchase and sale transaction contemplated herein (the “**Purchaser's Conditions Precedent**”):

(i) Neither Purchaser nor Seller may have terminated this Agreement.

(ii) Title Company will stand ready to issue at the Closing an ALTA Owner's Policy of Title Insurance on the standard form used in the state of California with liability in the full amount of the Purchase Price, subject only to the Permitted Exceptions (the "**Title Policy**") insuring Purchaser's interest in the Property, dated as of the date of the Closing.

(iii) Seller will have acquired fee title to the Lots or an OIP.

(iv) The sale of the Lots to Purchaser as contemplated herein will have been approved by the State Lands Commission. Purchaser agrees to use its best efforts to cause the State Lands Commission to approve the sale of the Lots to Purchaser in a prompt manner, and shall apply for approval no later than 14 days following execution of this Agreement.

(v) Seller will have remediated, or caused to be remediated, the Lots to the level specified in Section 5(b).

(vi) Seller will have improved the Lots to the reasonable satisfaction of Purchaser, by performing paving, striping, lighting, fencing, landscaping, and all other improvements necessary to cause the Lots to be suitable for use as a surface parking facility by persons attending the San Diego Convention Center. Attached hereto as Exhibit B is Seller's current program for improvement of the Lots. The improvement of the Lots shall be in substantial compliance with Exhibit B. Purchaser and the party, if any, selected by Purchaser to operate the Lots, will have the right to approve the plans and specifications for the improvements to the Lots and approve the condition of the Lots following completion of such improvements, which approvals will not be unreasonably withheld or delayed.

(vii) Seller will have constructed all required street and offsite improvements in connection with the operation of the Lots, including any applicable streetscape requirements.

(viii) Seller will have recorded a Notice of Completion, or its equivalent, in connection with the work performed to the Lots and specified in Section 7(a)(vi) above and will have issued a Certificate of Occupancy (or its equivalent) applicable to the Lots.

(ix) No pending or threatened litigation, administrative proceedings, investigations, or other form of governmental enforcement actions or proceedings exist as of the Closing, which are related to, directed at, or otherwise affecting the use, operation, or occupancy of any portion of the Lots.

The conditions set forth in this Section 7(a) are solely for the benefit of Purchaser and may be waived by Purchaser only. Purchaser will, at all times before the termination of this Agreement, have the right to waive any of these conditions.

(b) The following are conditions precedent to Seller's obligation to consummate the purchase and sale transaction contemplated herein (the "**Seller's Conditions Precedent**");

(i) Neither Purchaser nor Seller may have terminated the Agreement.

(ii) Purchaser will have delivered to Escrow Company, prior to the Closing, for disbursement as directed hereunder, all cash or other immediately available funds due from Purchaser in accordance with this Agreement.

The conditions set forth in this Section 7(b) are solely for the benefit of Seller and may be waived only by Seller. Seller shall, at all times before the termination of this Agreement, have the right to waive any of these conditions.

8. SELLER'S CLOSING DELIVERIES.

At least one (1) business day prior to the Closing, Seller shall deliver or cause to be delivered to Purchaser or Escrow Company the following:

(a) A grant deed in the form of Exhibit C attached hereto (the "**Grant Deed**"), executed by Seller, in recordable form, conveying the Property (free and clear of all claims, liens and encumbrances except the Permitted Exceptions) to Purchaser.

(b) An affidavit in the form of Exhibit D attached hereto, certifying that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986 (the "**Certificate of Non-Foreign Status**").

9. PURCHASER'S CLOSING DELIVERIES.

At least one (1) business day prior to the Closing, Purchaser shall deliver to Seller or Escrow Company any other documents, instruments or agreements reasonably necessary to effectuate the transaction contemplated by this Agreement.

10. CLOSING.

The "Closing" of the purchase and sale contemplated herein shall occur on the date that is 10 days after all of Purchaser's Conditions Precedent have been satisfied (the "**Closing Date**"), or the first business day after that date if the tenth day falls on a weekend or legal holiday. As used herein, the term "**Closing**" means the date and time that the Grant Deed is recorded in the Official Records of the County in which the Lots are located.

11. CLOSING COSTS.

Seller shall pay the portion of the premium for the Title Policy (including the cost of Title Curative Endorsements (defined below)) equal to the amount of a CLTA standard coverage owner's policy and fifty percent (50%) of all other escrow and closing costs. For purposes of this Agreement, and each of the documents executed in connection herewith, "**Title Curative Endorsements**" shall specifically mean and be limited to those title endorsements obtained by Seller to clear Disapproved Exceptions. Purchaser shall pay any additional title insurance premium payable in connection with any additional or extended title coverage (including, without limitation, any costs of surveys or survey updates as may be required to obtain extended coverage other than the Survey), the cost of any title endorsements which are not Title Curative Endorsements, and fifty percent (50%) of all other escrow and closing costs. Each party shall bear the expense of its own counsel. Unless otherwise specified herein, if the sale of the Property contemplated hereunder does not occur because of a default on the part of Purchaser or failure of a Seller's Condition Precedent, Purchaser shall pay all escrow and title cancellation fees; if the sale of the Property does not occur because of a default on the part of Seller or failure of a Purchaser's Condition Precedent, Seller shall pay all escrow and title cancellation fees.

12. RIGHT TO REPURCHASE.

(a) The parties acknowledge that the law presently applicable to Purchaser prohibits Purchaser from selling, disposing, or otherwise conveying the Lots after it acquires them. Accordingly, the terms of this Section 12 are subject to Purchaser having the legal right to re-sell the Lots to Seller at the time Seller elects to repurchase them hereunder. Purchaser agrees, however, to use its best efforts to reconvey the Lots to Seller, or cause the Lots to be reconveyed to Seller by whatever means may be available under then applicable law, if Seller elects to repurchase the Lots from Purchaser.

(b) Subject to the terms of Section 12(a) above, if Seller desires to repurchase the Lots, then Seller must deliver written notice ("**Repurchase Notice**") to Purchaser, or, if applicable, its successors or assigns, at least ten (10) business days before Seller desires to close the repurchase. The price which Seller will pay to reacquire the Lots ("**Repurchase Price**") will be determined as follows: if Seller delivers the Repurchase Notice within five (5) years after the Closing, then the Repurchase Price will be \$21 million. If Seller delivers the Repurchase Notice more than five (5) years after the Closing, then the Repurchase Price will be equal to the greater of (i) fair market value of the Lots without consideration of any use restrictions set forth in this Agreement imposed on the Lots ("**FMV**"), or (ii) \$21 million.

Seller and Purchaser shall meet and use good faith efforts to agree on the Repurchase Price. If the parties cannot agree on the Repurchase Price within ten (10) business days after first meeting and attempting to so agree, then the following procedure will be employed. Seller and Purchaser will each appoint an MAI designated appraiser with over ten years' experience appraising real estate in San Diego County to determine the FMV. The appraisers may not have worked for Purchaser or Seller in the preceding ten years. If either party fails to inform the other of its

appointed appraiser within such 10-day period, then the appraiser who is timely appointed will determine the FMV. Each appraiser will deliver a written appraisal setting forth the FMV within 60 days after being appointed. If the two appraisals are within ten percent of the FMV established in the lower of the two appraisals, then the average of the two appraisals will be deemed the FMV. If the two appraisals vary by more than ten percent of the FMV established in the lower of the two appraisals, then the two designated appraisers will appoint a third appraiser. The third appraiser must also be an MAI designated appraiser, and must have at least ten years' experience appraising real estate in San Diego County and may not have worked for Purchaser or Seller in the preceding ten (10) years. Within 30 days after being appointed, the third appraiser will determine the FMV by selecting the value assigned to the Lots in one of the two original appraisals. The third appraiser may not determine the FMV to be other than one of the two FMVs established by the original two appraisers. The third appraiser's determination of the FMV will be final and binding on the parties. If any appraiser does not satisfy an obligation of such appraiser within the time specified in this Section 12, then either Purchaser or Seller may elect, at its sole cost and expense, to replace such appraiser with a new appraiser who satisfies the criteria established above. Purchaser and Seller will each pay the cost associated with its own appraiser, and will share equally the cost of the third appraiser, if necessary.

13. ESCROW.

(a) **Instructions.** Within three (3) days after their respective execution of this Agreement, Purchaser and Seller each shall deposit a copy of this Agreement executed by such party (or either of them shall deposit a copy executed by both Purchaser and Seller) with Escrow Company. This Agreement, together with such further instructions, if any, as the parties shall provide to Escrow Company by written agreement, shall constitute the escrow instructions. If any requirements relating to the duties or obligations of Escrow Company hereunder are not acceptable to Escrow Company, or if Escrow Company requires additional instructions, the parties hereto agree to make such deletions, substitutions and additions hereto as Purchaser and Seller shall mutually approve, which additional instructions shall not substantially alter the terms of this Agreement unless otherwise expressly provided therein.

(b) **Deposits into Escrow.** Seller shall make its deposits into escrow in accordance with Section 8. Purchaser shall make its deposits into escrow in accordance with Sections 3 and 9. Escrow Company is hereby authorized to close the escrow only if and when: (i) Escrow Company has received all items to be delivered by Seller and Purchaser pursuant to Sections 8 and 9; and (ii) Title Company can and will issue the Title Policy concurrently with the Closing.

(c) **Close of Escrow.** Provided that Escrow Company shall not have received written notice in a timely manner from Purchaser or Seller of the failure of any condition to the Closing or of the termination of the escrow, and if and when Purchaser and Seller have deposited into escrow the matters required by this Agreement and Title Company can and will issue the Title Policy concurrently with the Closing, Escrow Company shall:

(i) Deliver to Purchaser: (1) the Grant Deed by causing it to be recorded in the Official Records of the Office of the County Recorder of the County in which the Property is located; and immediately upon recording, delivering to Purchaser a conformed copy of the Grant Deed; (2) the Certificate of Non-Foreign Status; (3) any funds deposited by Purchaser, and any interest earned thereon, in excess of the amount required to be paid by Purchaser hereunder; and (4) the Title Policy issued by Title Company.

(ii) Deliver to Seller: the remaining balance if any of the Purchase Price (which shall be delivered by wire transfer or other means approved by Seller) less any amounts already released to Seller for purposes of acquiring, remediating and improving the Lots.

(d) **Real Estate Reporting Person.** Escrow Company is hereby designated the "real estate reporting person" for purposes of section 6045 of Title 26 of the United States Code and Treasury Regulation 1.6045-4 and any instructions or settlement statement prepared by Escrow Company shall so provide. Upon the consummation of the transaction contemplated by this Agreement, Escrow Company shall file the Form 1099 information return and send the statement to Seller as required under the aforementioned statute and regulation.

14. GOVERNING LAW.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

15. MISCELLANEOUS.

(a) Each individual and entity executing this Agreement hereby represents and warrants that he, she or it has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf he, she or it is executing this Agreement to the terms hereof.

(b) This Agreement is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Agreement. Any waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or in behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

(c) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing

the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Agreement attached thereto.

(d) Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Agreement.

(e) Any communication, notice or demand of any kind whatsoever which either party may be required or may desire to give to or serve upon the other shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram or telecopy (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

Purchaser: San Diego Unified Port District
P.O. Box 120488
San Diego, California 92112-0488
Attn: Real Estate Operations
Telephone: (619) 686-6291
Telecopy: (619) 686-6403

With a copy to: San Diego Unified Port District
P.O. Box 120488
San Diego, California 92112-0488
Attn: Port Attorney
Telephone: (619) 686-6219
Telecopy: (619) 686-6444

Seller: City of San Diego
City Manager
202 C Street
San Diego, California 92101
Telephone: (619) 236-5941
Telecopy: (619) 236-6067

With a copy to: City Attorney
1200 3rd Avenue, Suite 1620
San Diego, California 92101
Telephone: (619) 236-6220
Telecopy: (619) 236-7215

Escrow Company: _____

Attn: _____
Escrow No. _____
Telephone: _____
Telecopy: _____

Any party may change its address for notice by written notice given to the other in the manner provided in this Section. Any such communication, notice or demand shall be deemed to have been duly given or served on the date personally served, if by personal service, one (1) day after the date of confirmed dispatch, if by electronic communication on a business day before 5:00 p.m., or three (3) days after being placed in the U.S. Mail, if mailed.

(f) The parties agree to execute such instructions to Escrow Company and such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement.

(g) The making, execution and delivery of this Agreement by the parties hereto has been induced by no representations, statements, warranties or agreements other than those expressly set forth herein.

(h) Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but, if any provision of this Agreement shall be invalid or prohibited thereunder, such invalidity or prohibition shall be construed as if such invalid or prohibited provision had not been inserted herein and shall not affect the remainder of such provision or the remaining provisions of this Agreement.

(i) The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto. Section headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement. References to "Sections" are to Sections of this Agreement, unless otherwise specifically provided.

(j) Subject to the arbitration provision set forth in Section 16 below, if any action is brought by either party against the other party, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action or any appeal thereof. For purposes of this Agreement, the term "prevailing party" shall include a party which is named as a defendant or cross-defendant in a suit or action arising from or under this Agreement if that suit or action is eventually voluntarily dismissed by the plaintiff or cross-plaintiff, as the case may be, therein or is dismissed by the court following a dispositive motion.

(k) This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and to their respective transferees, successors, and assigns. Neither this Agreement nor any of the rights or obligations of Seller or Purchaser hereunder shall be transferred or assigned by Seller or Purchaser without the prior written consent of the non-assigning party; which consent shall not be unreasonably withheld or delayed.

(l) Exhibits A-D attached hereto are incorporated herein by reference.

(m) Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the parties hereto partners or joint venturers, or to render either party liable for any of the debts or obligations of the other, it being the intention of the

parties to merely create the relationship of Seller and Purchaser with respect to the Property to be conveyed as contemplated hereby.

(n) Seller and Purchaser agree that it is their specific intent that no broker shall be a party to or a third party beneficiary of this Agreement or the escrow; and further that the consent of a broker shall not be necessary to any agreement, amendment, or document with respect to the transaction contemplated by this Agreement.

16. ARBITRATION OF DISPUTES.

IF ANY DISPUTE ARISES BETWEEN THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREIN, (HEREAFTER, A "DISPUTE"), THEN EITHER PARTY MAY ELECT TO RESOLVE THE DISPUTE PURSUANT TO THE TERMS OF THIS SECTION 16. WHEN EITHER PARTY DETERMINES THAT A DISPUTE HAS ARISEN, THE PARTIES SHALL MEET WITHIN 5 DAYS THEREAFTER TO NEGOTIATE IN GOOD FAITH IN AN ATTEMPT TO RESOLVE THE DISPUTE. IF THE DISPUTE IS NOT RESOLVED BY MUTUAL AGREEMENT OR COMPROMISE WITHIN SEVEN BUSINESS DAYS AFTER THE PARTIES MEET REGARDING THE DISPUTE, THEN THE PARTIES WILL RESOLVE THE DISPUTE BY BINDING ARBITRATION IN ACCORDANCE WITH THE FOLLOWING PROCEDURES:

WITHIN FIVE BUSINESS DAYS AFTER THE EXPIRATION OF THE FIVE-DAY DISPUTE RESOLUTION PERIOD DESCRIBED ABOVE, EACH PARTY WILL DESIGNATE A NEUTRAL ARBITRATOR WITH AT LEAST 10 YEARS' EXPERIENCE IN COMMERCIAL REAL ESTATE. IF EITHER PARTY FAILS TO INFORM THE OTHER OF THE ARBITRATOR SUCH PARTY HAS SELECTED WITHIN THE FIVE-DAY PERIOD, THEN THE ARBITRATOR PROPERLY SELECTED WITHIN SUCH FIVE-DAY PERIOD WILL CONDUCT THE ARBITRATION. IF BOTH PARTIES SELECT AN ARBITRATOR, THEN WITHIN 5 DAYS THEREAFTER, THE TWO ARBITRATORS SO SELECTED MUST DESIGNATE A THIRD ARBITRATOR (HEREAFTER, THE "ARBITRATOR") TO CONDUCT THE ARBITRATION. THE ARBITRATOR MAY NOT HAVE PERFORMED SERVICES FOR EITHER PARTY WITHIN THE PRECEDING TEN YEARS. EXCEPT AS OTHERWISE STATED HEREIN, THE ARBITRATOR WILL RESOLVE THE DISPUTE IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("RULES"). TO THE EXTENT THE RULES ARE SILENT, THE ARBITRATOR WILL APPLY THE PROCEDURES SET FORTH IN CALIFORNIA CODE OF CIVIL PROCEDURE §§ 1280 ET. SEQ. EACH PARTY MAY SUBMIT A WRITTEN BRIEF AND OTHER RELEVANT DOCUMENTS TO THE ARBITRATOR, BUT NO DEPOSITIONS OR DISCOVERY MAY BE CONDUCTED UNLESS ORDERED BY THE ARBITRATOR. THE ARBITRATOR WILL CONDUCT A HEARING IN THE COUNTY OF SAN DIEGO WITHIN 20 DAYS AFTER BEING SELECTED, AND WILL ISSUE A WRITTEN RULING WITH RESPECT TO THE DISPUTE PROMPTLY. IN NO EVENT WILL THE ARBITRATOR'S WRITTEN RULING BE ISSUED MORE THAN 10 DAYS AFTER THE HEARING. THE ARBITRATOR'S WRITTEN DECISION WILL RESOLVE THE DISPUTE, AND SUCH WRITTEN DECISION WILL BE BINDING ON THE PARTIES AND NOT APPEALABLE. NEITHER PARTY MAY PETITION A COURT TO CORRECT OR VACATE THE RULING. EACH PARTY WILL BEAR ITS OWN COSTS IN CONNECTION WITH THE ABOVE-DESCRIBED ARBITRATION PROCESS UNTIL SUCH TIME AS A WRITTEN RULING IS ISSUED. THEREAFTER, THE PREVAILING PARTY, AS DETERMINED BY THE

ARBITRATOR, WILL BE ENTITLED TO RECOVER ALL COSTS AND REASONABLE ATTORNEYS' FEES FROM THE NONPREVAILING PARTY.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Seller

Purchaser

17. FORCE MAJEURE EVENTS.

"**Force Majeure Event**" means any of the following events which prevents a party from performing any obligation under this Agreement: any act of God, strike, lockout or other industrial disturbance during the development or construction only of the surface parking lots; act of public enemy, blockade, war, insurrection, civil disturbance, explosion or riot; epidemic; landslide; earthquake, fire, storm, flood, or washout; title dispute, or other litigation, including the inability to timely obtain judgments in eminent domain or timely obtain possession through eminent domain; governmental restraint, action or inaction, either federal, state, county, civil or military, including the adoption of any new law materially affecting either the ability of the Parties to proceed or the costs of proceeding (but not including any City laws or ordinances); any initiative or referendum; and failure to obtain any necessary federal, state or county governmental approval.

[signatures on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

SELLER: CITY OF SAN DIEGO, a Municipal corporation

By: _____

Name:

Its:

APPROVED AS TO
FORM:

By: _____

City Attorney

PURCHASER: SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

By: _____

Name:

Its:

APPROVED AS TO
FORM:

By: _____

Port Attorney

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

EXHIBIT B

SELLER'S CURRENT PROGRAM FOR IMPROVEMENT OF THE LOTS

EXHIBIT C

FORM OF GRANT DEED

EXHIBIT D

FORM OF SELLER'S DECLARATION OF NON-FOREIGN STATUS

**PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

by

and

between

CITY OF SAN DIEGO,
a Municipal corporation

"Seller"

and

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

"Purchaser"

Dated as of

_____, 2000